Federal Court  Cour fédérale

Date: 20171003

Docket: T-186-13

Citation: 2017 FC 874

Ottawa, Ontario, October 3, 2017

PRESENT: Madam Prothonotary Mireille Tabib

BETWEEN:

MAOZ BETSER-ZILEVITCH

Plaintiff

and

NEXEN INC. AND CNOOC CANADA INC., EACH INDIVIDUALLY AND CARRYING ON BUSINESS AS A PARTNERSHIP REFERRED TO AS THE LONG LAKE OIL SANDS PROJECT

Defendants

ORDER AND REASONS

[1] The issue on this motion is whether the law firm hoping to act for the Plaintiff in this action has succeeded in rebutting the presumption that it is disqualified from doing so when one of its senior partners previously acted as solicitor of record for the Defendants in the same action while at another law firm. For the reasons that follow, I find that the presumption of disqualifying conflict has not been rebutted.

[2] The Plaintiff, Maoz Betser-Zilevitch, instituted this patent infringement action against the Defendants Nexen Inc. and CNOOC Canada Inc. in early 2013. I will refer to the Defendants collectively as Nexen in these reasons. Mr. Betser-Zilevitch was, until recently, represented by the Calgary law firm of Prowse Chowne LLP. Nexen engaged the services of Heenan Blaikie to defend it. Jonathan Stainsby, a partner and senior litigator at Heenan Blaikie, became involved in the defence of Nexen in September 2013, just as the statement of defence was about ready to be filed. He signed the statement of defence as sole solicitor of record for Nexen, and remained sole solicitor of record until the last day of February 2014, when the law firm of Heenan Blaikie was dissolved.

[3] Mr. Stainsby joined the firm of Aitken Klee on March 1, 2014, along with five other lawyers and a paralegal from Heenan Blaikie. Mr. Stainsby discussed with Nexen the possibility of bringing the mandate of defending the action with him at Aitken Klee, but Nexen chose instead to retain the services of Smart & Biggar as its new solicitors of record.

[4] In June 2017, some three years later, Mr. Betser-Zilevitch approached Aitken Klee to replace Prowse Chowne as its solicitors of record in this action. Aitken Klee advised Nexen's counsel of its intention to accept the mandate, informing it that while Mr. Stainsby recalled the existence of the action, he "had limited client contact and did not receive any confidential information from Nexen or CNOOC". In any event, Aitken Klee said it had set up an ethical wall to preclude any communication regarding the matter with Mr. Stainsby or any other former Heenan Blaikie employee.

[5] Nexen promptly registered its objection to Aitken Klee's retainer on grounds of conflict of interest and now brings this motion for an order that Aitken Klee be removed as solicitors of record for the Plaintiff. The proceedings in this action have essentially been suspended pending the determination of this motion.

[6] The leading case on the issue is *MacDonald Estate v Martin*, [1990] 3 SCR 1235. It teaches that in determining whether a law firm should be disqualified from acting in a matter where it is in a potential conflict of interest, the following two questions should be answered:

> 1. Did the lawyer receive confidential information attributable to a solicitor and client relationship relevant to the matter at hand?
>
> 2. Is there a risk that it will be used to the prejudice of the client?

I. Did Mr. Stainsby receive confidential information from Nexen?

[7] The starting point for answering this question is the presumption that Mr. Stainsby, having acted as solicitor of record for Nexen in this action, has obtained confidential information which, if known by Mr. Betser-Zilevitch's legal representatives, could be used to the prejudice of Nexen in this action. As stated in *MacDonald Estate* at page 1260:

> …once it is shown by the client that there existed a previous relationship which is sufficiently related to the retainer from which it is sought to remove the solicitor, the court should infer that confidential information was imparted unless the solicitor satisfies the court that no information was imparted which could be relevant. This will be a difficult burden to discharge.

[8] "The client" here is Nexen and the existence of a previous relationship is shown by the fact that Mr. Stainsby identified himself as solicitor of record for Nexen in this action. The

matter of the defence of Nexen is not merely related to the retainer at issue here, it is the same. Mr. Stainsby's new firm wishes to represent Mr. Betser-Zilevitch against Nexen in the same action for which he previously acted for Nexen.

[9] Mr. Stainsby, or his firm, thus bears the entire – and difficult – burden of satisfying the Court that no information was imparted to him by Nexen which could be relevant.

[10] Although it does not bear the evidentiary burden, but perhaps feeling it ought to address Aitken Klee's initial assertion that Mr. Stainsby did not receive any confidential information from it, Nexen filed the affidavit of Bruce Jones, assistant general counsel for Nexen at the relevant time. Mr. Jones' affidavit states that when Heenan Blaikie ceased representing Nexen, it gave Nexen its file in respect of this proceeding, which includes both communications between Heenan Blaikie and Nexen and internal Heenan Blaikie communications. Mr. Jones testifies that Mr. Stainsby was either sender, recipient or copied on over 300 emails relating to the action. According to Mr. Jones, Mr. Stainsby was, as a result of his involvement as solicitor for Nexen, made privy to confidential and privileged information, including litigation strategy, consideration of potential expert witnesses, and strategies with respect to the defences and counterclaim to be pursued and prior art to be asserted.

[11] Mr. Stainsby swore an affidavit in support of Aitken Klee's response. However, Mr. Stainsby's affidavit does not establish in a satisfactory manner that no relevant confidential information was imparted to him. His affidavit is to the effect that he does not recall that any of the emails referred to by Mr. Jones disclosed any confidential information, or that he advised on

any strategy, or that he was involved in considering potential experts witnesses. Mr. Stainsby's affidavit is to the effect that, to the extent he recalls anything at all, it is that his email communications and phone calls with Nexen's instructing principal "were general in nature and did not involve disclosure to me of any confidential information of the Defendants". Based on the fact that he does not "today" recall any information disclosed by Nexen that could be considered confidential, Mr. Stainsby agrees with Aitken Klee's characterization that he "did not receive any confidential information".

[12] It hardly seems necessary to state that one's positive burden to satisfy the Court that something did not happen cannot be overcome simply by asserting one's lack of recollection. Notwithstanding that self-evident conclusion, both Mr. Jones and Mr. Stainsby were cross-examined on their respective affidavits.

[13] The Plaintiff could have, but apparently chose not to request that Mr. Jones bring with him and produce at his cross-examination the emails to which his affidavit refers, or the invoices sent by Heenan Blaikie to Nexen that may have established the amount of time Mr. Stainsby spent and charged for his work on the file. Counsel for the Plaintiff at the hearing suggested that the Court should draw an adverse inference from Nexen's failure to produce these documents as part of its own evidence. That suggestion is inappropriate as it infers that it is Nexen who bears the burden of establishing that Mr. Stainsby received confidential information, whereas it is the opposite. It was for Mr. Stainsby, or Aitken Klee, to demonstrate that notwithstanding the inference that must be drawn from his relationship with Nexen, no confidential information was disclosed. While Aitken Klee did not have the emails and the billing information in its

possession, it did have the right to request that they be produced by Mr. Jones on cross-examination, subject to any claim of privilege. If a negative inference is to be drawn, it should be drawn against Aitken Klee and the Plaintiff.

[14] I note, in any event, that some documents appearing to be emails sent or received by Mr. Stainsby, or copied to him, were shown to Mr. Stainsby during his cross-examination. Many were heavily redacted, ostensibly to protect privileged information. These emails relate to the approach to be taken, in response to a pleadings motion by the Plaintiff, so as not to prejudice Nexen's position, identification of the experts to be contacted, including their CVs, and discussions as to their suitability, the estimated litigation budget, and even what appears to be a draft comparative claims chart. Mr. Stainsby was unable to recollect or positively identify most of them, but neither was he in a position to deny that the emails were what they purported to be. Some even sparked recollections for Mr. Stainsby, sufficient for him to eventually concede that he would indeed have received or been privy to confidential information when he worked on this matter for Nexen.

[15] I conclude that the inference that Mr. Stainsby did receive relevant confidential information as a result of his work for Nexen has not been rebutted and has even been confirmed.

[16] It was further disclosed, in the course of Mr. Stainsby's cross-examination, that Andrew McIntyre, another lawyer from Heenan Blaikie who moved to Aitken Klee with Mr. Stainsby, had also been involved in the defence of Nexen. The inference is therefore also that Mr. McIntyre received relevant confidential information from Nexen. No attempts were made to

rebut that inference. Mr. McIntyre is no longer at Aitken Klee and it appears he stayed a very short period of time before leaving. It seems that everyone at Aitken Klee had simply forgotten that he had been there and had worked on the Nexen file while at Heenan Blaikie. Nevertheless, the inference, as it relates to Mr. McIntyre, cannot be ignored and will be considered in these reasons.

II. Is there a risk that the confidential information possessed by Mr. Stainsby and Mr. McIntyre will be used to the prejudice of Nexen?

[17] Being in possession of relevant confidential information from Nexen, it is abundantly clear that Mr. Stainsby is in a disqualifying conflict and could not represent Mr. Betser-Zilevitch without Nexen's consent:

> A lawyer who has relevant confidential information cannot act against his client or former client. In such a case the disqualification is automatic. No assurances or undertakings not to use the information will avail. The lawyer cannot compartmentalize his or her mind so as to screen out what has been gleaned from the client and what was acquired elsewhere. Furthermore, there would be a danger that the lawyer would avoid use of information acquired legitimately because it might be perceived to have come from the client. This would prevent the lawyer from adequately representing the new client. Moreover, the former client would feel at a disadvantage. Questions put in cross-examination about personal matters for example would create the uneasy feeling that they had their genesis in the previous relationship.
>
> *MacDonald Estate*, at page 1261

[18] The question that does arise is whether the other partners and associates of Aitken Klee can act. That is where the second question identified in *MacDonald Estate* should properly be understood as being whether there is a risk that the information possessed by Messrs. Stainsby

and McIntyre has been or will be shared with other members of Aitken Klee. Indeed, the reasoning that applies to disqualify a lawyer who obtained confidential information directly from a client necessarily applies to disqualify a lawyer who obtains confidential information indirectly from a fellow lawyer.

[19] In answering this second question, the Supreme Court directs us to draw the inference that lawyers who work together share confidences, and that this inference can only be rebutted if the court is satisfied, on the basis of clear and convincing evidence, that all reasonable measures have been taken to ensure that no disclosure has or will occur by the "tainted lawyer" to those who will work on the new mandate.

[20] The operative presumption is therefore that, by virtue of being members of the same firm, Mr. Stainsby and Mr. McIntyre have shared confidences with other colleagues at Heenan Blaikie and that all the Heenan Blaikie lawyers who moved to Aitken Klee have shared and will continue to share confidences with their colleagues at Aitken Klee. Thus, the presumption is that all the lawyers at Aitken Klee are disqualified by conflict.

[21] Again, the burden rests entirely on Aitken Klee to rebut that presumption. The evidentiary burden goes beyond the mere balance of probabilities: The evidence must be clear and convincing. The Supreme Court goes further to make it abundantly clear that there must be more than undertakings and conclusory statements in lawyers' affidavits:

> *A fortiori* undertakings and conclusory statements in affidavits without more are not acceptable. These can be expected in every case of this kind that comes before the court. It is no more than the lawyer saying "trust me". This puts the court in the invidious

> position of deciding which lawyers are to be trusted and which are not. Furthermore, even if the courts found this acceptable, the public is not likely to be satisfied without some additional guarantees that confidential information will under no circumstances be used. In this regard I am in agreement with the statement of Posner J. in *Analytica, supra*, to which I have referred above, that affidavits of lawyers difficult to verify objectively will fail to assure the public.
>
> *MacDonald Estate*, at page 1263

[22] What then, are the measures taken by Aitken Klee to ensure that no disclosure has or will occur?

[23] I must note, at the outset, that no measures were taken or were in place at all to ensure that confidential information was not disclosed or shared between the ex-Heenan Blaikie lawyers and their new colleagues at Aitken Klee for the entire period between the time they moved to Aitken Klee in March 2014 and the time Aitken Klee set up its ethical wall in June 2017.

[24] Counsel for Mr. Betser-Zilevitch and Aitken Klee seemed untroubled by this gap, apparently believing that the risk of disclosure of confidential information between lawyers who work together does not arise at all unless and until one of them is actively engaged in a retainer related to that information. Thus, because the Heenan Blaikie lawyers did not bring the Nexen defence with them in March 2014 and Aitken Klee was not approached to represent Mr. Betser-Zilevitch until June 2017, there would have been no occasion or reason for confidences obtained from Nexen to have been shared by Heenan Blaikie lawyers with Aitken Klee lawyers during that period.

[25] The failure to erect an ethical screen at the time of a lawyer's transfer, when no conflict exists, may not necessarily be fatal to the effectiveness of a screen subsequently erected to address a post-transfer retainer. However, neither is it a matter that is irrelevant or ought to be ignored.

[26] There is no case of which I am aware that has considered the likelihood or risk that confidential information might be shared by transferring lawyers prior to a conflicting retainer. There is however evidence in the case law that some firms do require lateral hires to sign, as a matter of course, undertakings guarding against eventual conflicting retainers: in *Dow Chemical Canada Inc. v Nova Chemicals Corp.*, 2011 ABQB 509, at paragraph 12, reference is made to an undertaking required to be signed by a prospective transferring partner, to the effect that he "will not disclose to Bennett Jones or use for the benefit of Bennett Jones or its clients, confidential information obtained in my prior employment".

[27] As explained in *MacDonald Estate* at page 1263, the test is really whether a reasonable member of the public who is in possession of the facts would conclude that no unauthorized disclosure of confidential information has occurred.

[28] The facts for that purpose are as follows: At the time they left Heenan Blaikie for Aitken Klee, Messrs. Stainsby and McIntyre were actively involved in Nexen's defence. They were part of a group of six to join Aitken Klee, which had at the time approximately seven lawyers. The firm then, and now, has only one area of practice: patent litigation. While it operates out of two cities, Toronto and Ottawa, it has no separate departments or specialties. Partners and associates

work together as teams whether or not they are located in the same city. No partner has designated associates and no associate is reserved to a specific partner or partners. Six litigators from Heenan Blaikie therefore merged with seven litigators from Aitken Klee as a boutique patent litigation firm whose work seems characterized by teamwork. Even if the Heenan Blaikie lawyers did not bring the Nexen file with them and there was no need to discuss it with their new colleagues, it is quite conceivable that in the process of integration, they would discuss their previous mandates. In a team work environment, it would also not be unusual for strategies adopted in similar cases to be discussed among members of the team and confidences unwittingly compromised.

[29] Aitken Klee itself does not appear to have entirely discounted the relevance of enquiring into the possibility that the Heenan Blaikie lawyers could have shared relevant information with the Aitken Klee lawyers during that period. Indeed, every member of the firm has submitted an affidavit in which they assert that "none of Jonathan Stainsby, Anna Hucman, William Mayo, Lesley Caswell or Lilly Sormaz has ever discussed with me any information regarding this action that he or she may have received while employed at Heenan Blaikie".

[30] As mentioned by the Supreme Court in *MacDonald Estate*, the conclusory statements made in these affidavits, without more, are not acceptable. They are exactly the kind of affidavits that are "difficult to verify objectively and will fail to assure the public". The evidence before me on this motion even brings into question the accuracy and reliability of those very affidavits.

[31] In his affidavit, Mr. Klee makes the same blanket statement as his colleagues that Mr. Stainsby never discussed with him any information regarding this action that he might have received while employed at Heenan Blaikie; Mr. Stainsby, in his, asserts that other than to provide the facts set out in his affidavit, at no time since he joined Aitken Klee in February 2014 has he spoken with any member of Aitken Klee about this action.

[32] However, Mr. Stainsby admitted, when asked on cross-examination, that he had in fact had a discussion with Mr. Klee in 2014 about this action:

> Q. Do you recall, when you joined Aitken Klee effective March 1, 2014, if you had any discussions with anyone at Aitken Klee about this file?
>
> A. Only about the possibility of bringing it along. That is the only discussion, not about the content of the file.
>
> Q. But you did have a discussion with somebody at Aitken Klee.
>
> A. I said there was a possibility --I had been working on the matter with Nexen and there was a possibility that I would be able to bring it along but that the primary client lawyer was in Calgary so I did not really know what was going to happen.
>
> Q. Who was that discussion with?
>
> A. I don't remember. Probably with Marcus [Klee], but maybe with both.

[33] I find it troubling that while their affidavits suggest that they never had a single conversation about this action, Messrs. Klee and Stainsby had in fact had at least one discussion about the action in 2014. Mr. Stainsby in cross-examination insisted that the conversation was only about the possibility of bringing the mandate over and never about the content of the file or any confidential information, but as it became quite apparent in the course of his cross-

examination, Mr. Stainsby's recollection is far from reliable: he was adamant that he had not received confidential information in the course of his work for Nexen, until confronted with emails to the contrary.

[34] There is no telling whether the memory of Mr. Klee, or of any other member of the firm, about discussions and events of three years prior are any better that Mr. Stainsby's. After all, every one of them seems to have forgotten about Mr. McIntyre's presence at the firm. Mr. Aitken, who had stated in his affidavit that he had worked on only two cases with Mr. Stainsby since the latter joined the firm, recognized in cross-examination that he had inadvertently omitted two other matters on which they had worked together.

[35] Counsel for the Plaintiff insisted at the hearing that Mr. Klee's failure to mention the discussion he had with Mr. Stainsby in 2014 in his affidavit is not due to faulty memory, but that his statement denying having discussed "information regarding the action" should be read as implicitly limited to confidential information about the action, and not information that was publicly available.

[36] The mere existence of an uncertainty as to whether the 2014 discussion between Messrs. Klee and Stainsby was omitted purposefully because it was judged irrelevant or inadvertently because it was forgotten exemplifies why such affidavits are so difficult to verify objectively and will fail to satisfy the public.

[37] I am not suggesting that the evidence demonstrates that the lawyers from Heenan Blaikie did disclose confidential information of Nexen to their colleagues in the period between 2014 and 2017. That, however, is not the test. This test is whether in the circumstances, a well-informed member of the public would be satisfied that no confidential information was disclosed. I do not believe the public would have that confidence.

[38] I have, in any event, also considered whether the measures put in place by Aitken Klee to guard against future unauthorized disclosure of confidential information would be sufficient to rebut the inference that information within the knowledge of ex-members of Heenan Blaikie will be shared with those members of Aitken Klee acting on behalf of the Plaintiff.

[39] As soon as it determined it would accept Mr. Betser-Zilevitch's mandate, Aitken Klee erected an ethical wall designed to screen all ex-Heenan Blaikie lawyers from the team of two partners, two associates and two clerks who will work on this mandate. In setting up this ethical screen, Aitken Klee had regards to the 11 guidelines developed by the Canadian Bar Association in its Code of Professional Conduct as "Reasonable Measures to Ensure Non-Disclosure of Confidential Information".

[40] The Defendants have quibbles about whether the screen satisfies guidelines 4 and 5 because it does not specifically mention that lawyers who were not from Heenan Blaikie but are not designated to work on the Betser-Zilevitch matter should not have access to the file or discuss it with the Betser-Zilevitch team. I am not particularly concerned about these small details in the circumstances.

[41] Of far greater concern is the fact that Aitken Klee's ethical wall does not address item 11 of the CBA guidelines, which requires that the screened transferee(s) use associates and support staff other than those working of the conflicting mandate, and the fact that the firm does not intend to comply with that guideline.

[42] The Plaintiff submits that it is not necessary in all cases that a firm comply with each and every one of the guidelines in order to avoid disqualification, and that its ethical screen should be found reasonable and effective in the circumstances, even though there might be non-compliance with one or more guidelines.

[43] The Supreme Court in *MacDonald Estate* has recognized that standards may be developed by the governing bodies of the legal profession as to the institutional mechanisms and devices that could be considered reasonable measures to ensure that no disclosure will occur in case of lawyer transfers. The guidelines developed by the CBA and by the Law Society of Upper Canada, to name only those, caution that it is not possible to offer a set of "reasonable measures" that will be appropriate and adequate in every case. Adoption of only some of the guidelines may be adequate in some cases, while adoption of them all may not be sufficient in others.

[44] In assessing the sufficiency of the measures adopted in the circumstances of each case, the Court must not forget that what makes it necessary to adopt some "reasonable measures" in addition to lawyer's undertakings is the strong inference that the Court must otherwise draw that "lawyers who work together share confidences."

[45] As mentioned above, the practice of Aitken Klee seems, like many other firms engaged in patent litigation, to be characterized by teamwork. Mr. Stainsby is a senior partner. He has worked closely with Mr. Aitken, another senior partner who is on the Betser-Zilevitch team, on two large trials, and is expected to continue this collaboration on the upcoming appeals of those matters. Another two smaller mandates have been identified in which these two partners cooperated. Mr. Stainsby also currently works on at least two matters with Devin Doyle, one of the associates who would work on the Betser-Zilevitch mandate. Mr. Stainsby has also worked on one NOC application with Mr. Klee, the other lead partner on the Betser-Zilevitch matter, and has recently taken over from Mr. Klee on an action.

[46] The New Brunswick Court of Appeal in *Bank of Montreal v Dresler*, 2002 NBCA 69, at para 81, expressed the following reserve in respect of the effectiveness of a screen where lawyers on both sides nevertheless continue to work together on other files:

> [81] On the issue of firm size, the court must be satisfied that the transferring lawyer can be effectively screened from those working on the tainted file. In an ideal legal world, the screened lawyer would not have daily contact with those working on the tainted file. Thus, lawyers in the same firm, but who work in different cities, do not pose the same risk as those who practise within the same office space. In effect, the screened lawyer must be able to practise law independently of those representing the current client. If the screened lawyer continues to work on other files with those working on the conflict file, does it make any sense to perpetuate the belief that compliance with the Law Society's rules and guidelines has the effect of sustaining public confidence in the integrity of the legal profession and the administration of justice? I think not.
>
> [Emphasis added]

[47] The fact that Mr. Stainsby will not have access to the Betser-Zilevitch file, that he is based in Toronto while the other team's lawyers work out of the Ottawa office, and that in the "vast majority" of his practice he works "primarily" with the Toronto lawyers and not "routinely" with the Ottawa-based lawyers does not detract from the fact that he and the lawyers assigned to the Betser-Zilevitch matter are and intend to remain, not just lawyers who work for the same firm, but lawyers who work together. There are no measures or independently verifiable steps, beyond the written undertakings given by the lawyers on either side of the screen, to ensure that they will not, in the course of their work together on other files, discuss this particular matter. As the Supreme Court put it in *MacDonald Estate*, this is no more than the lawyers saying "trust me", and it cannot satisfy a reasonable representative of the public or preserve the public's confidence in the integrity of the profession.

[48] The Plaintiff has pointed to *Robertson v Slater Vecchio*, 2008 BCCA 306, as an example of a case where even imperfect compliance with this guideline was excused. The Court cited as concerns that this guideline may be difficult to comply with in a small firm, and that disqualification is a drastic measure that must be weighed against the other two competing values identified by the Supreme Court in *MacDonald Estate*: the right of litigants to the lawyer of their choice and the desirability of permitting reasonable mobility in the legal profession.

[49] *Slater Vecchio* is the only case brought to my attention where an ethical screen was held to be effective even though the screened lawyer might have entertained a working relationship with lawyers on the other side of the screen. In that case however, the evidence was merely unclear as to whether the screened lawyer had avoided working with other associates and staff

involved in the conflicting retainer. The Court further highlighted the fact that he was a mere associate, noting that the guideline relating to the use of associates is more appropriate for partners and senior associates than for a new associate. More importantly, *Slater Vecchio*, as most such cases, involved a conflict arising at the time of transfer, where disqualifying the firm would both impact a young lawyer's mobility and deprive a client from a pre-existing relationship with its counsel of choice.

[50] None of those factors are present in the circumstances to outweigh the primary concern of maintaining the high standards of the legal profession and the confidence of the public in the integrity of the system of justice. Mr. Stainsby and his colleagues from Heenan Blaikie have been at Aitken Klee for over three years. There is no evidence of a pre-existing relationship between Mr. Betser-Zilevitch and Aitken Klee or any of its lawyers. There is no suggestion that Mr. Betser-Zilevitch would have any difficulty retaining competent counsel to represent him other than Aitken Klee.

[51] In conclusion, the answers to the two questions identified by the Supreme Court in *MacDonald Estate* are as follows:

[52] As to the first question, Messrs. Stainsby and McIntyre did receive confidential information attributable to their solicitor and client relationship with Nexen that is relevant to the matter at hand.

[53] As to the second question, a reasonable member of the public in possession of all the information would conclude that there is a risk that this information will be used to the prejudice of Nexen. That is because a strong presumption arises, from the fact that all lawyers at Aiken Klee work together, that they have and will share confidences. This presumption has not been rebutted. There was no mechanism in place to discourage such sharing of information by the transferring lawyers in the period from March 2014 to June 2017, and the ethical screen erected in June 2017 allows lawyers on both sides of the screen to continue to work together and is thus ineffective.

[54] The Plaintiff and Aitken Klee have not discharged the difficult burden on them to rebut the presumption that a disqualifying conflict exists in this case. The Defendants' motion for an order removing Aitken Klee as solicitor of record for the Plaintiff in this matter is therefore granted. Both parties agreed that it is appropriate in the circumstances that costs be made payable forthwith and in any event of the cause, and suggested they be fixed in an amount between $3,000 and $5,000.

ORDER

THIS COURT ORDERS that:

1. Aitken Klee is hereby removed as solicitors of record for the Plaintiff.

2. The Plaintiff shall, no later than 30 days from the date of this order, cause to be served and filed a notice of appointment of solicitor of record or a notice of intention to act in person.

3. Costs of this motion in the amount of $4,000 shall be paid by the Plaintiff to the Defendants, forthwith and in any event of the cause.

"Mireille Tabib"
Prothonotary

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-186-13
STYLE OF CAUSE:	MAOZ BETSER-ZILEVITCH v NEXEN INC. AND CNOOC CANADA INC., EACH INDIVIDUALLY AND CARRYING ON BUSINESS AS A PARTNERSHIP REFERRED TO AS THE LONG LAKE OIL SANDS PROJECT
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	SEPTEMBER 26, 2017
ORDER AND REASONS:	TABIB P.
DATED:	OCTOBER 3, 2017

APPEARANCES:

Donald Cameron	FOR THE PLAINTIFF
Daniel Davies Steven Garland	FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Bereskin & Parr Barristers and Solicitors Toronto, Ontario	FOR THE PLAINTIFF ON THE MOTION
Aitken Klee LLP Barristers and Solicitors Ottawa, Ontario	FOR THE PLAINTIFF IN THE ACTION
Smart & Biggar Barristers and Solicitors Ottawa, Ontario	FOR THE DEFENDANTS